

# Exhibit D

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
SUSANNA MIRKIN and BORIS MIRKIN,  
Individually and on Behalf of All Others  
Similarly Situated,  
Plaintiffs,  
vs. No. 18 Civ. 2949 (ARR) (RER)  
XOOM ENERGY, LLC and XOOM ENERGY  
NEW YORK, LLC,  
Defendants.

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VIDEOTAPED DEPOSITION OF  
SEABRON ADAMSON  
Tuesday, November 8, 2022  
10:06 a.m.  
Veritext  
101 Arch Street  
Boston, Massachusetts 02110

Laurie K. Langer, RPR

1 Q. Okay. And so are you also offering an opinion  
2 about how the pricing terms of the sales agreements  
3 should be interpreted?

4 A. No. I'm providing a -- my -- well, I'm providing  
5 my understanding of what it says and in the context of  
6 the, of electricity and gas markets and retail markets  
7 and how that works out. Obviously, I'm not offering a  
8 legal opinion on the language.

9 Q. Okay.

10 A. I'm offering my understanding based on knowledge  
11 of these markets of how these, how these work.

12 Q. Okay. You're not offering a legal interpretation  
13 of the pricing provisions in the XOOM sales agreement?

14 MR. WITTELS: Objection. I mean, I think he  
15 asked -- he just answered it, didn't he?

16 MR. MATTHEWS: Steve, please, no speaking  
17 objections today. Please.

18 MR. WITTELS: But it's the same question.

19 MR. MATTHEWS: "Objection form" is what's  
20 appropriate to say, as you have reminded me. Okay?

21 A. I am not offering a legal opinion.

22 Q. Okay. Were you asked to assume a particular  
23 interpretation of the pricing provisions?

24 A. No, not really. I mean, they're on the page.

1 close, not arbitrarily high.

2 Q. Okay.

3 A. Not with an arbitrarily added offset.

4 Q. Okay. For purposes of this question I'm not  
5 ask -- I'm not presenting you with a hypothetical.

6 A. Uh-huh.

7 Q. You said that it --

8 A. Uh-huh.

9 Q. -- is insufficient just for the rate to go up and  
10 down with costs; yes?

11 A. Yes.

12 Q. I'm asking you, Seabron Adamson, in your opinion  
13 what else is required?

14 A. Okay. I'll explain it as clear as I can and  
15 maybe we'll get to it. To my first read, as I said, you  
16 should be -- you should be able to -- that the rate  
17 should be based on the estimated and actual supply  
18 costs. Right?

19 So that means -- and I said in my opinion that  
20 did not allow, you know, the first read that does not  
21 allow a margin to be added. If a margin -- and I said,  
22 well, you know, perhaps the jury finds it differently  
23 and says, "okay, there can be a margin." Or a Court.  
24 If there is to be a margin then the margin can't be --

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter  
and Notary Public in and for the Commonwealth of  
Massachusetts, do hereby certify that the witness whose  
deposition is hereinbefore set forth, was duly sworn by  
me and that such deposition is a true record of the  
testimony given by the witness.

I further certify that I am neither related to or  
employed by any of the parties in or counsel to this  
action, nor am I financially interested in the outcome  
of this action.

In witness whereof, I have hereunto set my hand and  
seal this 11th day of November, 2022.



NOTARY PUBLIC

Commission Expires

7/27/2023